

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

NOV 07 2017

JULIA C. DUDLEY, CLERK
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UNITED STATES OF AMERICA

Case No. 4:15-cr-00016-1

v.

MEMORANDUM OPINION

GORDON LAWRENCE PENN,
Petitioner.

By: Hon. Jackson L. Kiser
Senior United States District Judge

By its Order entered on October 3, 2017, the court notified petitioner of its intent to construe and address petitioner's motion to suppress, motion as to ineffective assistance, motion for ineffective assistance, motion for appointment of counsel (collectively referenced as the Motions) as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The Order advised petitioner, inter alia, to complete and return a form § 2255 motion in order to comply with Rule 2(b) of the Rules Governing § 2255 Proceedings. See, e.g., Castro v. United States, 540 U.S. 375, 383 (2003) (requiring the court to give petitioner an opportunity to elect whether a criminal motion should be addressed as § 2255 motion). The Order also notified petitioner that a failure to comply would result in the construed § 2255 motion being dismissed without prejudice. Petitioner has not complied within the allotted time, and accordingly, I dismiss the conditionally filed § 2255 motion without prejudice. Based upon petitioner's failure to comply and to make the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c) and Slack v. McDaniel, 529 U.S. 473, 484 (2000), a certificate of appealability is denied.

ENTER: This 7th day of November, 2017.

Jackson L. Kiser
Senior United States District Judge